SILVER KING
COMMUNICATIONS, INC.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 94-150
Review of the Commission's
Regulations Governing Attribution
of Broadcast Interests

MM Docket No. 92-51
Review of the Commission's
Regulations and Policies
Affecting Investment
in the Broadcast Industry

MM Docket No. 87-154
Reexamination of the Commission's
Cross-Interest Policy

Dear Mr. Caton:

Transmitted herewith on behalf of Silver King Communications, Inc. are an original and four copies of its Comments in the above-referenced proceeding.

If there are any questions concerning this matter, please contact the undersigned.

Sincerely,

Michael Drayer
Executive Vice President
and General Counsel

Enclosures

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List ABCDE

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Before the
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COMMENTS OF SILVER KING COMMUNICATIONS, INC.

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May 17, 1995

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SUMMARY

The Commission is seeking comment on its attribution rules and the cross-interest policy, and their relationship to investment in the broadcast industry. The Commission expresses concern that its attribution rules may be too easily subverted and perhaps should be tightened. As demonstrated herein by Silver King Communications, Inc. ("SKC"), the attribution rules are working properly and any tightening of them will have a devastating impact on minority ownership which the agency is attempting to foster in a companion rulemaking. Accordingly, SKC supports retention of the Commission's attribution standards except with respect to the company's support for a relaxed standard for minority-controlled entities as proposed in the agency's Minority Ownership rulemaking proceeding. SKC also supports abolition of the cross-interest policy as applied to nonattributable equity interests because it has significant and demonstrable shortcomings while providing no public interest benefits.

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To: The Commission

COMMENTS
of
SILVER KING COMMUNICATIONS, INC.

Silver King Communications, Inc. ("SKC") hereby submits these Comments in response to the Commission's Notice of Proposed Rulemaking, MM Docket Nos. 94-150, 92-51 and 87-154 (released January 12, 1995) (hereinafter "NPRM") concerning the Commission's attribution rules and cross-interest policy, and their relationship to investment in the broadcast industry.

INTRODUCTION

SKC, through various subsidiaries, owns and operates 11 full-power, full-service, UHF television stations and one full-power, UHF television satellite station. These stations all currently broadcast Home Shopping Club programming. In addition, SKC's stations devote more airtime to local and public interest programming than most independent UHF television stations in their markets.[1] Also, through various subsidiaries, SKC has lending and/or equity relationships with minority broadcasters who control six operating broadcast television stations with a seventh station under construction.

In its NPRM, the Commission seeks comment on its attribution rules and the cross-interest policy, and their relationship to investment in the broadcast industry. In its Comments, SKC will address several, but not all, aspects of the attribution rules and the cross-interest policy and demonstrate that the latter should be substantially relaxed or abolished, and that the attribution rules are working properly and any tightening of the attribution rules will have a devastating impact on minority involvement (i.e., ownership) in the television broadcast industry thereby subverting the Commission's companion rulemaking dedicated to increasing minority ownership of mass media facilities in MM Docket Nos. 94-149 and 91-140.

BACKGROUND

SKC and its former parent, Home Shopping Network, Inc. ("HSN"), have done more than any other single broadcast owner to further minority television station ownership. It is through these ventures that SKC has developed "real-world" experience in the benefits and effectiveness of the

[1] Home Shopping Station Issues, *Report and Order in MM Docket No. 93-8*, rel. July 19, 1993 at Para. 30. As Commissioner Quello wrote in his Separate Statement:

> I will not repeat the discussion contained in the *Report and Order* regarding the extent to which home shopping stations devote time to traditional public service programs. But quite frankly, I was surprised at the extent to which this is true. In addition to the formal comments submitted for the record, the Commission was flooded with correspondence attesting to the community service provided by these stations.

Commission's attribution rules. Prior to December 28, 1992, when SKC was spun off from HSN and became a separate standalone company, HSN and its then-subsidiary SKC worked in concert on these ventures, typically (but not always) with SKC or one of its subsidiaries acquiring equity, and providing loan proceeds and technical and local programming expertise, and HSN's programming subsidiary, Home Shopping Club, Inc. ("HSC"), providing "network" programming. Accordingly, the combined role of HSN and SKC is implicit in all discussions of these ventures which commenced prior to December 28, 1992. However, as is also evident from SKC's Comments herein, SKC has continued to pursue these ventures with equal vigor -- most notably in the form of expanding its relationship with Blackstar Communications, Inc. and in investing in a Denver, Colorado station under construction -- since becoming a separate standalone company.

Beginning in 1986, when it acquired its first station, SKC resolved to make affirmative efforts to expand the pool of minority-owned television stations, not only because it was a wise business investment, but also because its was the right thing to do. Since that time, SKC has funded or initiated funding of the acquisition or construction of seven minority-owned television stations and HSC has furthered the development of others through its affiliation agreements with such stations.

Through a $5 million capital investment, SKC enabled Blackstar Communications, Inc. ("Blackstar") to acquire three major market television stations: Station WBSF(TV), Channel 43, Melbourne (Orlando), Florida; Station WBSP-TV, Channel 22, Salem (Portland), Oregon; and Station WBSX(TV), Channel 31, Ann Arbor (Detroit), Michigan. Blackstar is now one of the largest minority-controlled group station owners in the country. SKC, through a subsidiary, owns a 45% nonvoting common stock interest and 100% of the issued and outstanding preferred stock in Blackstar.

On November 5, 1993, an SKC subsidiary loaned Blackstar bridge financing of $2.3 million that allowed Blackstar to retire its indebtedness to the Federal Depository Insurance Corporation and restructure its preferred stock dividend obligations to SKC's subsidiary. Blackstar was subsequently able to refinance this bridge loan and these transactions ultimately made possible the formation of Blackstar L.L.C. described below.

On October 6, 1994, SKC, Blackstar management and Fox Television Stations, Inc. ("Fox") reached an agreement in principle to organize a new venture, Blackstar L.L.C., to acquire television stations in the United States which will affiliate with Fox. Blackstar's three existing stations will continue their affiliations with HSC. SKC and management of Blackstar intend to contribute their common stock in Blackstar to Blackstar L.L.C. The investments by Blackstar management and SKC will be supplemented by an investment in Blackstar L.L.C. by Fox and possibly other equity investors and by raising capital through various classes of debt. The Blackstar L.L.C. members believe that this venture (which has only become possible as a result of SKC's role in the formation of Blackstar and its provision to Blackstar of bridge financing), if successful, can become the preeminent minority-owned broadcast business in the United States.

Roberts Broadcasting Company ("RBC") applied for a construction permit for a new station on Channel 46 in East St. Louis, Illinois in 1981, and after a long comparative hearing was awarded the permit in 1987. The company, however, experienced difficulty in obtaining financing and faced surrender of the construction permit. In 1989, SKC provided a loan to RBC in excess of $3.8 million to fund the construction and start-up operation of Station WHSL-TV, East St. Louis, Illinois. WHSL-TV commenced operations in September 1989 as the first new television station in the St. Louis market in 20 years. As the result of the participation of SKC, WHSL-TV has provided new jobs and opportunities for the St. Louis community. SKC, through a subsidiary, owns a 45% nonvoting common stock interest in RBC.

Jovon Broadcasting Corporation ("Jovon") was awarded a construction permit for Channel 62, Hammond, Indiana in 1986. Like RBC, however, it encountered severe difficulties in obtaining financing. In 1990, SKC loaned $3.6 million to Jovon for the construction and start-up operation of Station WJYS(TV) (serving the Chicago market). That station began operations on March 3, 1991. The licensee's President and controlling shareholder has told the Senate, "WJYS-TV would not be on the air today....if Home Shopping Network had not financed and programmed the station." Today, WJYS(TV) is broadcasting as an independent station no longer affiliated with HSC. SKC, through a subsidiary, has an option to purchase a 45% nonvoting common stock interest in Jovon.

Also in 1990, SKC entered into an agreement with Urban Broadcasting Corporation ("Urban") to fund the construction and start-up operation of its new television station, WTMW(TV), Channel 14, Arlington, Virginia. SKC has committed over $10.5 million dollars to this project and this new television station -- the first Black-owned commercial television station in the nation's capital -- commenced operations in August 1993. SKC, through a subsidiary, owns a 45% nonvoting common stock interest in Urban.

On August 26, 1994, an SKC subsidiary and Roberts Broadcasting Company of Denver ("RBCD") entered into a loan agreement and related agreements for the SKC subsidiary to loan RBCD $3.7 million over time for RBCD's construction and start-up operation of Station KTVJ(TV), Channel 14, Boulder, Colorado. An SKC subsidiary owns a 45% nonvoting common stock interest in RBCD. The station, which is currently under construction, will serve the Denver, Colorado metropolitan area.

These stations' minority owners -- RBC, Jovon and Urban -- had been awarded construction permits after years of litigation, but were unable to obtain financing to build their stations. RBCD simply could not find financing anywhere else to support its acquisition of a station and/or permit to construct a station in the Denver market. Without the financial, technical and other support of SKC and HSN, construction most certainly would not have begun and the minority-owned service these stations represent would not exist. Likewise, Blackstar would not have obtained the financing to acquire its three stations. Moreover, there would be no Blackstar L.L.C. which may one day rival in size the largest nonminority group owners. The television stations funded by SKC represent approximately one-third of the Black-owned commercial television stations in the country.

Moreover, HSC has entered into Television Affiliation Agreements with numerous other minority-controlled companies which enabled them to either complete station construction and begin operations or remain on the air.[2] Among those companies are:

Racine Telecasting Company
Station WJJA-TV, Racine, Wisconsin

Ponce-Nicasio Broadcasting Ltd.
Station KCMY(TV), Sacramento, California

Pan Pacific Television, Inc.
Station KPST-TV, Vallejo, California

Fouce Amusement Enterprises, Inc.
Station KRCA-TV, Riverside, California

The importance of these minority-controlled stations was noted in a letter to Chairman

[2] As Carmen Ponce-Nicasio Briggs, President and owner of Ponce-Nicasio Broadcasting, Inc. stated to the Senate, "The FCC gave us 'life,' but HSN programming gave us the 'bread' to meet our daily operating expenses allowing us to retain ownership.....[HSN programming] was our economic salvation."

Dingell, dated July 20, 1992, from Sharon McPhail, President of the National Bar Association:

> These minority broadcasters provide their communities with programs that are produced locally and programs that address issues of interest to their minority audience: they are providing vital training and employment opportunities for minorities in the broadcast field.

ATTRIBUTION

The Commission seeks comment on: (1) the continued viability of its attribution exception that provides where an entity has a single majority shareholder all other parties are nonattributable, and (2) the nonattribution of holders of nonvoting stock. The Commission also seeks comment on whether certain combinations of relationships and/or investments which, by themselves, would not be attributable, should result in attribution because of the potential influence they represent in combination. SKC will address the latter issue first thereby demonstrating that the current attribution rules should be retained[3] because, even in combination, otherwise nonattributable relationships should not be deemed attributable.

As an threshold matter, the Commission's proposal to consider some unspecified combination of nonattributable interests as conferring sufficient influence to be deemed attributable would create uncertainty that would deter investments -- in minority-controlled companies, female-controlled companies and small business ventures, among others -- which would outweigh any perceived benefits from such a policy.[4] More importantly, however, it has been SKC's experience that such benefits do not exist. In other words, such nonattributable interests do not confer unwarranted

[3] SKC does, however, support relaxation of the Commissions attribution rules as proposed in the FCC's Minority Ownership rulemaking proceeding and discussed in SKC's Comments therein.

[4] The problems of regulatory uncertainty -- well understood by the Commission -- are a fundamental problem with "enforcement" of the Commission's cross-interest policy as well.

influence.

For example, SKC is currently involved in a dispute with Urban concerning loan payments under the parties' loan agreement. Accordingly, this dispute is currently the subject of litigation notwithstanding the operational assistance SKC provided to Urban in launching WTMW(TV) and SKC's subsidiary's 45% nonvoting common stock interest in Urban.[5]

SKC also is currently engaged in discussions with Jovon concerning the exercise of its subsidiary's option to acquire a 45% nonvoting common stock interest in Jovon. Again, notwithstanding SKC's subsidiary's position as Jovon's lender, the parties have been unable to reach accord on exercise of the option due to uncertainty over the applicability of the Commission's cross-interest policy.

Thus SKC's experience demonstrates that even where a nonvoting stockholder is the 100% lender to the station owner, the nonvoting stockholder's influence is only as good as its relationship with the controlling shareholder(s). Likewise, there is no reason to believe this would not also be the case with respect to a voting shareholder if there was a single majority shareholder.

It cannot be overemphasized that the HSN/SKC informal minority investment program -- which has yielded six on-air television stations, one station under construction and potentially a major new force in broadcasting in Blackstar L.L.C. -- simply would never have come into existence had some of the Commission attribution proposals now under consideration been previously adopted (e.g., attributing nonvoting stock; attributing relationships involving a combination of equity, programming and/or loans). Furthermore, maintaining these standards is equally important to

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[5] It bears noting that this dispute has had no impact on the continuing commitment of SKC and its minority partners to their existing minority ventures nor to SKC's pursuit of expanding its business with its existing partners and its seeking new investments.

ownership growth among females and small business owners who are likewise under represented in the broadcast industry. Any changes to these standards would deter capital investment and subvert any advances sought by the Commission in its Minority Ownership and Television Ownership rulemaking proceedings. The fact that any well-crafted set of rules and policies -- even ones as successful as the attribution rules have been in promoting minority ownership -- is subject to abuse should not result in the Commission throwing out the baby with the bath water.

Accordingly, the Commission should maintain its current attribution standards[6] and continue to apply existing policies and case law with respect to measuring influence and control (i.e., focusing on personnel, finances and programming).[7]

However, if the Commission nonetheless believes that even nonvoting stock can convey undue influence due to the fiduciary duties of voting stockholders to large equity holders of any form of common stock in a corporate entity, SKC proposes that the Commission retain its standard of nonattribution of nonvoting common stock interests so long as the holder of such nonvoting common stock holds less than 50% of the common stock equity in the company.[8] The examples cited by SKC,

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[6] Except with respect to adoption of a relaxed standard for minority-controlled entities as proposed in the Commission's Minority Ownership rulemaking proceeding,

[7] In the event the Commission makes any restrictive changes to its attribution rules, they should be prospective in nature and existing nonattributable relationships should be grandfathered to avoid exacting undeserved economic penalties on companies which have played by the existing rules and to prevent unnecessary industry disruption. This grandfathering should include entities with pending applications at the Commission where such entities already have established their legal corporate existence and binding contracts are in place. See Broadcasting & Cable, "Tax certificates gone, except Tribune's," April 3, 1995 at 10.

[8] Preferred stock without voting rights should not be considered even under this approach because it is more akin to debt financing than a common stock equity investment in that it provides a yield, but not an asset value-based return upon a sale of the company.

in which its subsidiaries hold either a 45% nonvoting common stock equity interest or an option relating thereto, undercuts any claim that a nonvoting common stock interest, even in a combination with sole lender status, confers sufficient influence to raise well-founded attribution concerns. Nonetheless, if the Commission were to tighten its standards pursuant to SKC's alternative proposal, there would be greater assurance of the integrity of the corporate structure and the minority owner would be assured of reaping a substantial benefit consistent with its role upon any appreciation of the company's value and the sale thereof.[9]

CROSS-INTEREST POLICY

The Commission seeks comment on its cross-interest policy including, among other aspects, the continued viability of agency review of relationships wherein an entity has an attributable interest in one media outlet and a substantial nonattributable equity interest in another media outlet in the same market.[10] NPRM at 83 (emphasis added).

The continued application of the cross-interest policy to such nonattributable equity interests should be abandoned. There is uncontrovertible evidence that this policy "imposes administrative burdens and creates uncertainty" (id.) which can only be casually dismissed by those not actually involved in consummating transactions in the business world, and the policy produces no benefits, much less serves "an important role." Id.

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[9] This tightening of the attribution standards, if adopted, should not, however, apply to minority-controlled companies with respect to the proposed relaxation of such standards in the Commission's Minority Ownership rulemaking proceeding.

[10] As will be shown herein, the arbitrary determination that the 5% voting stock equity benchmark is what determines whether a nonattributable equity interest (e.g., nonvoting stock) is "substantial" is not in any way -- other than regulatory convenience -- tied to any meaningful definition of substantial.

As described herein, SKC is currently engaged in discussions with Jovon concerning the exercise of its subsidiary's option to acquire a 45% nonvoting common stock interest in Jovon. Yet, the parties have been unable to reach accord on exercise of the option due to uncertainty over the applicability of the Commission's cross-interest policy. This uncertainty has significant ramifications in the dynamic world of communications transactions. Obviously, an administrative burden on the parties and the agency is created because going forward with the exercise of the option may require one or both of the parties to seek a declaratory ruling from the Commission. Meanwhile Jovon is essentially "frozen out" of marketplace transactions while this issue remains unresolved. Moreover, this uncertainly deters SKC and others from accepting or attributing significant value to such options -- or from acquiring similar nonattributable equity interests outright -- potentially removing them as future sources of capital the next time a broadcaster or aspiring broadcaster similarly-situated to Jovon needs to raise capital.

There is simply no evidentiary support for the notion that this aspect of the cross-interest policy serves an important role or any beneficial public policy objective. By definition, an nonattributable equity interest is sufficiently passive so as not to confer the ability to exert adequate influence for the holder of the interest to hinder competition in favor of the holder's attributable interest.[11] In any event, even this theoretical, unproven benefit that proponents of this aspect of the cross-interest policy are able to conjure up is woefully inadequate as a basis for maintaining the policy when weighed against its significant and demonstrable shortcomings. Accordingly, the cross-interest

[11] The integrity of the Commission's attribution standards already has been addressed herein.

policy as applied to nonattributable equity interests should be abolished.[12]

CONCLUSION

This past year's renewed vitality of the broadcast industry and accompanying internecine warfare has lead to a misplaced concern that the Commission's attribution rules are too lax or to easily subject to abuse. The facts simply do not bear out these concerns. The Commission's attribution standards are not a science, but must be tested and continually assessed by experience. That experience has shown that the agency's current attribution standards are working well and, of equal importance, any tightening of those standards will be counterproductive by erecting new barriers to industry access by minorities, females and small business owners, and by handicapping all broadcasters in their ability to sustain growth in an increasingly competitive communications industry.

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[12] If the Commission nonetheless believes this theoretical incentive not to compete must be addressed other than by private contracts, federal and state antitrust laws and fiduciary duties, SKC proposes that the policy remain in effect only outside the top 50 markets.

SKC also has shown that there is simply no sustainable case for maintaining the cross-interest policy as applied to nonattributable equity interests. Accordingly, SKC respectively requests that the Commission adopt its proposals as advanced herein.

Respectfully submitted,

SILVER KING COMMUNICATIONS, INC.

By: ______________________

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